

ABSTRACT

This research aims to find the philosophical meaning of taawun principle in debt contract in sharia pawnshop, to find the principles of the contract underlying the characteristics of legal relationships in the debt contract in sharia pawnshop and their relationship with the principle of taawun as its basic foundation, and to find the normative clause of several contracts integrated in the debt contract in sharia pawnshop by associating the principle of taawun as the basic foundation.

This research uses the type of normative legal research, with four approaches, namely, statutory approach, conceptual approach, historical approach, and comparative legal approach. The issue of this research, is the most important to strength the principle of taawun in sharia pawnshop.

The result of the research shows that the philosophical meaning of taawun principle in debt contract in sharia pawnshop is the principle that establishes the legal relationship between sharia pawnshop with the customer, which is based on the responsibility of social virtue based on spiritual spirit and help , not the interest to obtain financial benefits (profit). Some principles of contract in debt contract in sharia pawnshop, have integral relationship that are interconnected with the principle of taawun as its basic foundation. The signing of clauses of several contracts that are integrated into the debt contract in the sharia pawnshop, such as the administrative cost clause and the ijarah clause, are very urgent to be reconstructed, so that the nomenclature of the contract remains consistent on the basis of the principle of taawun. Researcher's recommendation, among others, needs to make draft of sharia pawn draft more emphasized taawun principle as its main principle, the need for the restructuring of business entities into non-profit business entities, such as Koperasi Sharia or Baitul Maal Wat Tamwil.

Keywords: the Sharia Pawnshop, the Debt Contract, and the Principle of Taawun

ABSTRAK

Penelitian ini bertujuan menemukan makna filosofis asas *taawun* dalam perjanjian utang di pegadaian syariah, serta menemukan asas-asas perjanjian yang mendasari karakteristik hubungan hukum perjanjian utang piutang di pegadaian syariah, relevansinya dengan asas *taawun* sebagai landasan pokoknya, dan menemukan penormaan klausula beberapa akad yang terintegrasi dalam perjanjian utang piutang di pegadaian syariah dengan mengkaitkan asas *taawun* sebagai landasan pokoknya.

Penelitian ini menggunakan tipe penelitian hukum normatif, dengan pendekatan, yaitu pendekatan perundang-undangan, pendekatan konseptual, pendekatan sejarah, dan pendekatan perbandingan hukum. Isu penelitian adalah urgensi asas *taawun* dalam perjanjian utang di pegadaian syariah.

Hasil temuan penelitian bahwa secara filosofis asas *taawun* dalam perjanjian utang piutang di pegadaian syariah, menetapkan kerangka hubungan hukum antara pegadaian syariah (*muqridh*) dengan nasabah (*muqtaridh*), tegak atas dasar kebajikan sosial, berlandaskan semangat tolong menolong, bukan kepentingan untuk memperoleh *profit*. Beberapa asas perjanjian dalam perjanjian utang piutang di pegadaian syariah yang penting seperti kebebasan berkontrak, itikad baik, amanah, tertulis, kehati-hatian, sebab yang halal, dan asas lain yang relevan, merupakan asas yang saling terkait dengan asas *taawun* sebagai landasan pokoknya. Penormaan klausula beberapa akad yang terintegrasi pada perjanjian utang piutang di pegadaian syariah, seperti klausula biaya administrasi dan klausula akad *ijarah*, sangat urgen untuk direkonstruksi, agar nomenklatur perjanjian tersebut tetap konsisten berbasis asas *taawun*. Berdasarkan temuan, rekomendasi peneliti, perlu RUU pegadaian syariah yang lebih menekankan asas *taawun* sebagai prinsip utamanya; juga perlu restrukturisasi badan usaha pegadaian syariah menjadi badan usaha yang non-profit, seperti koperasi syariah atau *Baitul Maal Wat Tamwil*.

Kata Kunci: Pegadaian Syariah, Perjanjian Utang Piutang, dan Asas *Taawun*